

Breathing Life Into the “Living Trust”

You may have wondered where the term “living trust” comes from. It is used to describe the type of trust that one establishes and operates during his or her lifetime. (also known as an “inter vivos” trust). The living trust is in contrast to the “testamentary trust”. A testamentary trust is one created to take effect only upon the death of the grantor. The terms of this type of trust are usually written in a will and the trust can only be carried out after death and by order of the probate court. Most trusts in use today are living trusts.

Many people having good intentions establish a living trust to operate during their lifetime in case of disability and to distribute their assets without probate when they pass away. However, some people mistakenly assume that creating a trust is all that needs to be done. Unless you “breathe life” into a trust, it is not much better than the paper that it is written on. The way that a living trust is brought to life, or implemented, is through a process called “funding”.

A trust must be funded to be valid and only assets that have been transferred to the trust during the grantor's lifetime will benefit from the advantages of a living trust. Funding a trust involves the actual process of changing the ownership of assets or designating the trust as a beneficiary of accounts. The trust is then able to stand as a separate entity that holds the property. For example, where real estate is involved, a new deed is drawn up which changes the ownership from the name of the individual to that of the trust. The grantor transfers title from him or herself as an individual back to him or herself as trustee of the trust. The deed will say “Jane Doe, an individual, hereby grants to Jane Doe as trustee of the Jane Doe Trust, the real property located at 123 Main Street”. That deed is then filed with the county recorder where the real estate is located. For bank accounts, insurance policies, brokerage accounts and similar property, the institution that holds the asset must be contacted and requested to change the ownership or beneficiary designation, as appropriate. Some assets may be intentionally left out of the trust, such as cars, because of the difficulty in transferring the ownership or other considerations. As a general rule, however, most of what a person owns should be transferred into the trust. Once a trust has been established and funded, it is important for the grantor should take title to later purchases of property in the name of the trust.

The mechanics of transferring assets into a trust are time consuming and require attention to detail; however, failure to do this can be fatal to your trust. Many attorneys leave it to the client to take these important measures without sufficient guidance on how it is to be done. Some even fail to instruct the client as to the importance of putting assets in the trust. A good attorney will include the process of transferring assets as part of the total estate plan.